IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18285 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made/home/bhatt/sca823707o1.sxw thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YOGIJI MAHEJ KELVANI TRUST - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
MS ARCHANA RAVAL, AGP. for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 28/03/2007

ORAL JUDGMENT

1 Considering the narrow scope of controversy between the parties the matter is taken up for final hearing and disposal today. **Rule.** Ms. Archana Raval, learned Assistant Government Pleader appearing on behalf of the respondents is directed to waive service.

2 The petition has been filed challenging order dated 4.5.2005 made by respondent No.2 whereunder salary grant of one Smt. Daxaben K. Solanki for the period from 1.3.1995 to 28.4.1997 has been withheld.

3 Admittedly vide letter dated 13.6.1994 the District Education Officer granted No Objection Certificate to the petitioner school to recruit one additional teacher considering the fact that there was increase in the number of students for the year 1994-95. One Smt. Daxaben K. Solanki came to be appointed with effect from 6.2.1995 after following due procedure. Her appointment was approved by the District Education Officer on 3.6.1995 with effect from 1.3.1995. The said lady worked with the petitioner school till she resigned on 7.1.1998.

4 It is the say of the petitioner that the petitioner had been requesting the respondent authorities to release the salary grant qua the said teacher but as the grant was not being released the petitioner was making payment of the salary in cash from own funds of the petitioner. The petitioner moved this Court as the respondent authority was not responding. On 9.2.2005 the High Court passed an order in Special Civil Application No. 15860 of

2004 whereunder the Court directed the respondent authorities to take a decision in respect of the request made by the petitioner. The petitioner was granted personal hearing on 12.4.2005 and ultimately on 4.5.2005 the impugned order came to be made.

5 As can be seen from the impugned order it has been held by the authority that grant relatable to the salary for the period 29.4.1997 to 6.1.1998 is required to be paid to the petitioner while for the balance period viz., from 1.3.1995 to 28.4.1997 no grant can be released towards salary of Smt. Daxaben K. Solanki because:-

[i] The petitioner has made the claim for the entire salary grant after a period of five years;

[ii] The petitioner has not got the account regarding payment of salary to Smt. Daxaben K.Solanki audited;

[iii] The petitioner has made payment to the concerned teacher in cash whereas in fact the teachers are required to be paid salary through bank;

[iv] Whether the petitioner has paid the salary as per terms fixed and whether the teacher has received the complete salary is required to be verified;

[v] As at the relevant time there was a ban to the extent of 5% in recruitment of teachers the petitioner school is not entitled to the additional teacher.

6 The learned Advocate for the petitioner has reiterated the submissions made in the petition and the learned Assistant Government Pleader has reiterated the reasons which have

weighed with the respondent authorities in restricting the claim for the period 29.4.1997 to 6.1.1998.

7 The stand of the respondent authority would have been acceptable provided the respondent authority had adopted the same stand for the entire period. Moment the respondent authority states that the petitioner school is entitled to the salary grant relatable to Smt. Daxaben for the period 29.4.1997 to 6.1.1998 viz., after the 5% recruitment ban was lifted, all other reasons recorded by the respondent authorities pale into insignificance. These reasons no longer remain germane. Even for the later period for which the salary grant is sanctioned the same reasons, viz. payment in cash to the teacher, non verification whether the teacher has received full salary etc., would operate, but the respondent authority itself has stated and accepted that for the period commencing from 29.4.1997 upto 6.1.1998 the salary grant is payable, it means that the respondent authority has itself given a go bye to the said reasons for the said period. If that be so, the same consideration has to prevail for the earlier period. There cannot be two yard-sticks to decide whether the salary grant is required to be paid or not for the two periods, wherein artificial distinction of periods has been brought about.

8 Moreover, even the reason that there was 5% recruitment ban upto 29.4.1997 also does not stand to reason because in 1995 the respondent authority had granted sanction to recruit the additional teacher and approved the selection process and the appointment of the said teacher.

9 In the aforesaid facts and circumstances of the case the impugned order to the extent it withholds the salary grant of Smt. Daxaben K. Solanki for the period 1.3.1995 to 28.4.1997 cannot be upheld, and is hereby quashed and set aside. The respondent authority is directed to release the salary grant for the earlier period relatable to Smt. Daxaben K. Solanki i.e. from 1.3.1995 to 28.4.1997.

10. The petition is allowed accordingly to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J.)

m.m.bhatt.